S.B. CIVIL WRIT PETITION NO.2175/2007
(Smt.Sayal Kanwar & anr. Vs. The Rent Tribunal, Bikaner & ors.)

Date of Order :: 30th July 2007

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr.Bheemkant Vyas for the petitioners

The present petitioners-tenants are non-applicants in a petition for eviction filed by their landlord on the grounds of reasonable and bona fide requirement and non-user of the premises. The petitioners have, inter alia, taken an objection in their reply that late Shri Ramswaroop was the original tenant and now, his sons Narpat Singh, Surendra, and Narendra were carrying on business in the suit shop; and the petition for eviction was not maintainable for non-joinder of the said Surendra and Narendra. The landlord has filed a rejoinder denying if Surendra and Narendra were carrying on business in the suit premises and has stated that Surendra Kumar was operating a taxi and Narendra Kumar was working at Surat. The Tribunal has framed the issues on the question of (i) reasonable and bona fide requirement; (ii) non-user of the suit premises by the non-applicant; and (iii) relief, as appears from the memo of issues dated 13.07.2006 (Annex.4). No other issue was suggested by the parties at that time.

It appears that after evidence of the parties was concluded and the matter was fixed for final arguments, the petitioners moved an application under Order 14 Rule 5 CPC. Though a copy of this application has not been placed on record with this writ petition but it has been contended that the petitioners prayed for framing of an issue to the effect that eviction petition was not competent for non-joinder of Surendra and Narendra as parties.

The Rent Tribunal, after hearing the parties on the said application under Order 14 Rule 5 CPC, has observed that the application was filed at a belated stage and even otherwise, these being the proceedings under the Rajasthan Rent Control Act, 2001, the provisions of Code of Civil Procedure as such do not apply and the issues were framed by the Tribunal only for its convenience; and that if some averment has been taken in the pleading and evidence in that relation has also been adduced, the same could be considered in accordance with law. The Tribunal has further observed,-

> "विचाराधीन प्रार्थना पत्र में उल्लेखित है कि अप्रार्थी ने अपने जवाब में सुरेन्द्र व नरेन्द्र को प्रकरण में आवश्यक पक्षकार बताया था और इनको पक्षकार नहीं बनाये जाने के कारण प्रकरण खारिज किए जाने का निवेदन किया था । हमारी राय में इस संबंध में उपलब्ध साक्ष्य के आधार पर तनकी ना होते हुए भी विचार किया जा सकता है ।"

The aforesaid material paragraph of the impugned order dated 21.03.2007 as available in the certified copy (at page 32 of the paper book) does not even find mention in the typed copy of the said order supplied with this petition. Learned counsel for the petitioners states this to be a bona fide typographical error.

Be that as it may, having examined the matter in its totality, this Court is satisfied that this writ petition remains wholly bereft of substance and does not merit admission. The observations as made by the Tribunal are clearly in accord with the principles of natural justice and the requirements of the Act of 2001. The application as moved by the petitioners merely seeking framing of an additional issue at the stage of final arguments was wholly meritless and has rightly been rejected by the Tribunal.

Learned counsel for the petitioners contends that by framing of additional issue, no prejudice is to be caused to the respondents inasmuch as no fresh evidence is requisite and only the particular question directly involved in the case would be specifically decided by the Tribunal. The submission does not carry even hyper technical value what to say of substance. The Tribunal has already observed that the question sought to be posed by the petitioners could be considered even

without framing of a distinct issue on the basis of evidence available on record. There appears no error of jurisdiction in this case so as to warrant interference by this Court.

The writ petition fails and is, therefore, dismissed summarily.

(DINESH MAHESHWARI), J.

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